



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,441	11/07/2003	Gaelle Brun	05725.1257-00	9409

22852 7590 01/28/2008  
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
901 NEW YORK AVENUE, NW  
WASHINGTON, DC 20001-4413

EXAMINER
CHANNAVAJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
1611	

MAIL DATE	DELIVERY MODE
01/28/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

### Application No.

10/702,441

### Applicant(s)

BRUN ET AL.

### Examiner

Lakshmi S. Channavajjala

### Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-15 and 17-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-9, 11-15 and 17-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Receipt of amendment, response dated 10-25-07 is acknowledged.

Claims 10 and 16 are canceled. Claims 1-9, 11-15 and 17-34 are pending.

#### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-9, 11-15 and 17-34 have been considered but are moot in view of the new ground(s) of rejection.

#### *Claim Rejections - 35 USC § 103*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-9, 11-15 and 17-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,689,372 ('372).

'372 teach antimicrobial composition comprising oxathioazolone compounds of formula I. The compound of general formula I of '372 read on the instant cyclic carbonate because instant claims allow for the presence of Oxygen at R<sub>2</sub>, substituting R<sub>1</sub> with an alkyl group or substituted with groups such as aryl groups, with n being 1 (see compounds of col. 1-2). According to the instant formula 1, the variable "z" may be a divalent linear alkylene radical optionally substituted with heteroatom, and '372 teach an alkylene group substituted with an N atom. While '372 does not state that the compounds are capable of polymerizing under external stimulus, '372 teaches the same compounds and therefore the ability to polymerize is the property of the compounds of '372.

'372 teach employing the above compounds in personal care compositions such as hair care or skin care products, so as to protect the hair and skin from infection (col. 4). '372 further teaches including personal care additives such as thickeners, coloring agents, oils, UV absorbers, antioxidants in the composition (col. 4), depending on the type of personal care preparation, and thus meet the instant claims 14-15. Accordingly, optimizing the amounts the additives so as to achieve the desired effect would have been within the scope of a skilled artisan. With respect to the limitations of claims 7-9, while '372 does not teach the same result, the compounds of '372 are the same as claimed and the reference also teaches application to hair. Accordingly, the burden is shifted to applicants to show that the compounds are not effective in improving the hair qualities claimed. With respect to the amounts of the compound, '372 teach employing in the amount of 0.01% to 15%, which overlaps with the claimed amount (see claims 18-20). For the claims reciting specific polymerization initiators, such as metal salts, enzymes, water (claims 2-4 and 32-33), instant claims do not recite the initiators positively and only recite the initiators for intended use. Thus, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the oxathioazolone compound of '372 in any suitable hair or skin care composition because '372 teaches that the compound has good antimicrobial properties and accordingly, a skilled artisan would have expected to achieve a cleansing and disinfecting effect.

With respect to the specific reducing and oxidizing agents of claims 24-26, 28-30, '372 does not teach the specific colorants and dye materials. However, '372 teach hair treatment preparations with additives such as hydrogen peroxide solutions (bleach), self-oxidizing dyes and natural or artificial colorants (col. 5, L 45-59) and therefore employing the suitable dyes, couplers, bleaches etc., depending on the hair coloring or bleaching preparation employed would have been within the scope of a skilled artisan at the time of the instant invention.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

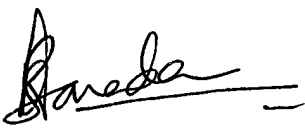
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM - 5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AU 1611  
January 21, 2008

  
LAKSHMI S. CHANNAVAJJALA  
PRIMARY EXAMINER